



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R05-OAR-2014-0704; FRL-9926-33-Region 5]**

**Approval and Promulgation of Air Quality Implementation Plans;  
Wisconsin; Infrastructure SIP Requirements for the 2008 Ozone,  
2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve some elements of state implementation plan (SIP) submissions from Wisconsin regarding the infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2008 ozone, 2010 nitrogen dioxide (NO<sub>2</sub>), and 2010 sulfur dioxide (SO<sub>2</sub>) National Ambient Air Quality Standards (NAAQS). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA.

**DATES:** Comments must be received on or before **[insert date 30 days after publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2014-0704, by one of the following methods:

1. [www.regulations.gov](http://www.regulations.gov): Follow the on-line instructions for submitting comments.
2. E-mail: [aburano.douglas@epa.gov](mailto:aburano.douglas@epa.gov).
3. Fax: (312) 408-2279.
4. Mail: Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. Hand Delivery: Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No.

EPA-R05-OAR-2014-0704. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov),

including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov) your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the SUPPLEMENTARY INFORMATION section of this document.

*Docket:* All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Eric Svingen, Environmental Engineer, at (312) 353-4489 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Eric Svingen, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-4489, [svingen.eric@epa.gov](mailto:svingen.eric@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

I. What should I consider as I prepare my comments for EPA?

II. What is the background of these SIP submissions?

III. What guidance is EPA using to evaluate these SIP submissions?

IV. What is the result of EPA's review of these SIP submissions?

V. What action is EPA taking?

VI. Statutory and Executive Order Reviews

**I. What should I consider as I prepare my comments for EPA?**

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).
2. Follow directions - EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

## **II. What is the background of these SIP submissions?**

### **A. What state submissions does this rulemaking address?**

This rulemaking addresses June 20, 2013, submissions and a January 28, 2015, clarification from the Wisconsin Department of Natural Resources (WDNR) intended to address all applicable infrastructure requirements for the 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS.

### **B. Why did the state make these SIP submissions?**

Under section 110(a)(1) and (2) of the CAA, states are required to submit infrastructure SIPs to ensure that their SIPs provide for implementation, maintenance, and enforcement of the NAAQS, including the 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS. These submissions must contain any revisions needed for meeting the applicable SIP requirements of section 110(a)(2), or certifications that their existing SIPs for the NAAQS already meet those requirements.

EPA highlighted this statutory requirement in an October 2,

2007, guidance document entitled "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and PM<sub>2.5</sub><sup>1</sup> National Ambient Air Quality Standards" (2007 Guidance) and has issued additional guidance documents, the most recent on September 13, 2013, entitled "Guidance on Infrastructure State Implementation Plan (SIP) Elements under CAA Sections 110(a)(1) and (2)" (2013 Guidance). The SIP submissions referenced in this rulemaking pertain to the applicable requirements of section 110(a)(1) and (2), and address the 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS.

**C. What is the scope of this rulemaking?**

EPA is acting upon the SIP submissions from Wisconsin that address the infrastructure requirements of CAA section 110(a)(1) and (2) for the 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS. The requirement for states to make SIP submissions of this type arises out of CAA section 110(a)(1), which states that states must make SIP submissions "within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)," and these SIP submissions are to provide for the "implementation, maintenance, and enforcement"

---

<sup>1</sup> PM<sub>2.5</sub> refers to particles with an aerodynamic diameter of less than or equal to 2.5 micrometers, oftentimes referred to as "fine" particles.

of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that "[e]ach such plan" submission must address.

EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA section 110(a)(1) and (2) as "infrastructure SIP" submissions. Although the term "infrastructure SIP" does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as SIP submissions that address the nonattainment planning requirements of part D and the Prevention of Significant Deterioration (PSD) requirements of part C of title I of the CAA, and "regional haze SIP" submissions required to address the visibility protection requirements of CAA section 169A.

This rulemaking will not cover three substantive areas that are not integral to acting on a state's infrastructure SIP submissions: (i) existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction ("SSM") at sources, that may be contrary to the CAA and EPA's



policies addressing such excess emissions; (ii) existing provisions related to "director's variance" or "director's discretion" that purport to permit revisions to SIP approved emissions limits with limited public notice or without requiring further approval by EPA, that may be contrary to the CAA; and, (iii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's "Final NSR Improvement Rule," 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) ("NSR Reform"). Instead, EPA has the authority to address each one of these substantive areas in separate rulemakings. A detailed history, interpretation, and rationale as they relate to infrastructure SIP requirements can be found in EPA's May 13, 2014, proposed rule entitled, "Infrastructure SIP Requirements for the 2008 Lead NAAQS" in the section, "What is the scope of this rulemaking?" (see 79 FR 27241 at 27242 - 27245).

### **III. What guidance is EPA using to evaluate these SIP submissions?**

EPA's guidance for these infrastructure SIP submissions is embodied in the 2007 Guidance referenced above. Specifically, attachment A of the 2007 Guidance (Required Section 110 SIP Elements) identifies the statutory elements that states need to submit in order to satisfy the requirements for an

infrastructure SIP submission. As discussed above, EPA issued additional guidance, the most recent being the 2013 Guidance that further clarifies aspects of infrastructure SIPs that are not NAAQS specific.

#### **IV. What is the result of EPA's review of these SIP submissions?**

Pursuant to section 110(a), states must provide reasonable notice and opportunity for public hearing for all infrastructure SIP submissions. WDNR provided notice of a public comment period on May 1, 2013, held a public hearing at WDNR State Headquarters on June 10, 2013, and closed the public comment period on June 14, 2013. Two comments were received, expressing support for improved environmental protection and air quality.

Wisconsin provided a detailed synopsis of how various components of its SIP meet each of the applicable requirements in section 110(a)(2) for the 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS, as applicable. The following review evaluates the state's submissions.

##### **A. Section 110(a)(2)(A) - Emission limits and other control measures.**

This section requires SIPs to include enforceable emission limits and other control measures, means or techniques, schedules for compliance, and other related matters. However, EPA has long interpreted emission limits and control measures

for attaining the standards as being due when nonattainment planning requirements are due.<sup>2</sup> In the context of an infrastructure SIP, EPA is not evaluating the existing SIP provisions for this purpose. Instead, EPA is only evaluating whether the state's SIP has basic structural provisions for the implementation of the NAAQS.

Under Wisconsin Statutes (*Wis. Stats.*) 227 and 285, WDNR holds the authority to create new rules and implement existing emission limits and controls. Authority to monitor, update, and implement revisions to Wisconsin's SIP, including revisions to emission limits and control measures as necessary to meet NAAQS, is contained in *Wis. Stats.* 285.11 - 285.19. Authority related to specific pollutants, including the establishment of ambient air quality standards and increments, identification of nonattainment areas, air resource allocations, and performance and emissions standards, is contained in *Wis. Stats.* 285.21 - 285.29.

Specifically, authority for WDNR to create new rules and regulations is found in *Wis. Stats.* 227.11, 285.11, and 285.21. *Wis. Stats.* 227.11(2)(a) expressly confers rule making authority to an agency. *Wis. Stats.* 285.11(1) and (6) require that WDNR

---

<sup>2</sup> See, e.g., EPA's final rule on "National Ambient Air Quality Standards for Lead." 73 FR 66964 at 67034.

promulgate rules and establish control strategies in order to prepare and implement the SIP for the prevention, abatement, and control of air pollution in Wisconsin.

The 2013 Guidance states that to satisfy section 110(a)(2)(A) requirements, "an air agency's submission should identify existing EPA-approved SIP provisions or new SIP provisions that the air agency has adopted and submitted for EPA approval that limit emissions of pollutants relevant to the subject NAAQS, including precursors of the relevant NAAQS pollutant where applicable." In its January 28, 2015, clarification letter, WDNR identified existing controls and emission limits in the Wisconsin Administrative Code that can be applied to the 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS. These regulations include controls and emission limits for volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>), which are precursors to ozone. VOC as an ozone precursor is controlled by Wisconsin Administrative Code Chapters Natural Resources (NR) 419 - 425, and NO<sub>x</sub> as an ozone precursor is controlled by NR 428; these regulations can be applied to the 2008 ozone NAAQS. NR 428 contains existing controls and emission limits for NO<sub>x</sub>; these regulations can be applied to the 2010 NO<sub>2</sub> NAAQS. NR 418 contains existing controls and emission limits for SO<sub>2</sub>; these regulations can be applied to the 2010 SO<sub>2</sub> NAAQS.

In this rulemaking, EPA is not proposing to approve any new provisions in NR 419 - 425, NR 428, or NR 418 that have not been previously approved by EPA. EPA is also not proposing to approve or disapprove any existing state provisions or rules related to start-up, shutdown or malfunction or director's discretion in the context of section 110(a)(2)(A). EPA proposes that Wisconsin has met the infrastructure SIP requirements of section 110(a)(2)(A) with respect to the 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS.

**B. Section 110(a)(2)(B) - Ambient air quality monitoring/data system.**

This section requires SIPs to include provisions to provide for establishing and operating ambient air quality monitors, collecting and analyzing ambient air quality data, and making these data available to EPA upon request. This review of the annual monitoring plan includes EPA's determination that the state: (i) monitors air quality at appropriate locations throughout the state using EPA-approved Federal Reference Methods or Federal Equivalent Method monitors; (ii) submits data to EPA's Air Quality System (AQS) in a timely manner; and, (iii) provides EPA Regional Offices with prior notification of any planned changes to monitoring sites or the network plan.

WDNR continues to operate an extensive air monitoring

network, which is used to determine compliance with the NAAQS. Furthermore, WDNR submits yearly monitoring network plans to EPA, and EPA approved WDNR's Annual Air Monitoring Network Plan for ozone, NO<sub>2</sub>, and SO<sub>2</sub> on October 31, 2014. Monitoring data from WDNR are entered into EPA's AQS in a timely manner, and the state provides EPA with prior notification when changes to its monitoring network or plan are being considered. EPA proposes that Wisconsin has met the infrastructure SIP requirements of section 110(a)(2)(B) with respect to the 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS.

**C. Section 110(a)(2)(C) - Program for enforcement of control measures; PSD.**

This section requires each state to provide a program for enforcement of control measures. Section 110(a)(2)(C) also includes various requirements relating to PSD.

**1. Program for enforcement of control measures.**

States are required to include a program providing for enforcement of all SIP measures and the regulation of construction of new or modified stationary sources to meet new source review (NSR) requirements under PSD and nonattainment new source review (NNSR) programs. Part C of the CAA (sections 160 - 169B) addresses PSD, while part D of the CAA (sections 171 - 193) addresses NNSR requirements.

WDNR maintains an enforcement program to ensure compliance with SIP requirements. The Bureau of Air Management houses an active statewide compliance and enforcement team that works in all geographic regions of the state. WDNR refers actions as necessary to the Wisconsin Department of Justice with the involvement of WDNR. Under *Wis. Stats.* 285.13, WDNR has the authority to impose fees and penalties to ensure that required measures are ultimately implemented. *Wis. Stats.* 285.83 and *Wis. Stats.* 285.87 provide WDNR with the authority to enforce violations and assess penalties. EPA proposes that Wisconsin has met the enforcement of SIP measures requirements of section 110(a)(2)(C) with respect to the 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS.

## 2. PSD.

110(a)(2)(C) includes various PSD requirements: identification of NO<sub>x</sub> as a precursor to ozone provisions in the PSD program, identification of precursors to PM<sub>2.5</sub> and the identification of PM<sub>2.5</sub> and PM<sub>10</sub><sup>3</sup> condensables in the PSD program, PM<sub>2.5</sub> increments in the PSD program, and greenhouse gas (GHG) permitting and the "Tailoring Rule."<sup>4</sup> In this rulemaking, we are

---

<sup>3</sup> PM<sub>10</sub> refers to particles with an aerodynamic diameter of less than or equal to 10 micrometers.

<sup>4</sup> In EPA's April 28, 2011, proposed rulemaking for infrastructure SIPs for the 1997 ozone and PM<sub>2.5</sub> NAAQS, we stated that each state's PSD program must

not taking action on the state's satisfaction of the various PSD permitting requirements. Instead, EPA will evaluate Wisconsin's compliance with each of these requirements in a separate rulemaking.

**D. Section 110(a)(2)(D) - Interstate transport; pollution abatement.**

Section 110(a)(2)(D)(i)(I) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment, or interfering with maintenance, of the NAAQS in another state. Section 110(a)(2)(D)(i)(II) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality or to protect visibility in another state.

**1. Interstate transport - significant contribution.**

On February 17, 2012, EPA promulgated designations for the 2010 NO<sub>2</sub> NAAQS, stating for the entire country that, "The EPA is

---

meet applicable requirements for evaluation of all regulated NSR pollutants in PSD permits (see 76 FR 23757 at 23760). This view was reiterated in EPA's August 2, 2012, proposed rulemaking for infrastructure SIPs for the 2006 PM<sub>2.5</sub> NAAQS (see 77 FR 45992 at 45998). In other words, if a state lacks provisions needed to adequately address NO<sub>x</sub> as a precursor to ozone, PM<sub>2.5</sub> precursors, PM<sub>2.5</sub> and PM<sub>10</sub> condensables, PM<sub>2.5</sub> increments, or the Federal GHG permitting thresholds, the provisions of section 110(a)(2)(C) requiring a suitable PSD permitting program must be considered not to have been met irrespective of the NAAQS that triggered the requirement to submit an infrastructure SIP.



designating areas as “unclassifiable/attainment” to mean that available information does not indicate that the air quality in these areas exceeds the 2010 NO<sub>2</sub> NAAQS” (see 77 FR 9532). For comparison purposes, EPA examined the design values<sup>5</sup> based on data collected between 2011 and 2013 from NO<sub>2</sub> monitors in Wisconsin and surrounding states. Within Wisconsin, the highest design value was 49 ppb at a monitor in Milwaukee. In surrounding states, the highest design value was 64 ppb at a monitor in Chicago, IL. These design values are both lower than the standard, which is 100 ppb for the 2010 NO<sub>2</sub> NAAQS. Additionally, as discussed in EPA’s evaluation of 110(a)(2)(A) requirements, NR 428 contains controls and emission limits for NO<sub>x</sub>. Furthermore, NR 432 allows Wisconsin to implement the state portions of the Clean Air Interstate Rule (CAIR), which addresses emissions of NO<sub>x</sub> as well as SO<sub>2</sub>. On January 1, 2015, CAIR was replaced by the Cross-State Air Pollution Rule (CSAPR), which requires reductions of NO<sub>x</sub> and SO<sub>2</sub> emissions in order to reduce interstate transport. WDNR works with EPA in implementing this program. EPA believes that, in conjunction with the continued implementation of the state’s ability to

---

<sup>5</sup> The level of the 2010 NO<sub>2</sub> NAAQS is 100 parts per billion (ppb) and the form is the 3-year average of the annual 98<sup>th</sup> percentile of the daily 1-hour maximum. For the most recent design values, see <http://www.epa.gov/airtrends/values.html>.

limit NO<sub>x</sub> emissions, low monitored values of NO<sub>2</sub> will continue in and around Wisconsin. In other words, NO<sub>2</sub> emissions from Wisconsin are not expected to cause or contribute to a violation of the 2010 NO<sub>2</sub> NAAQS in another state.

In this rulemaking, EPA is not evaluating section 110(a)(2)(D)(i)(I) requirements relating to significant contribution to transport for the 2008 ozone and 2010 SO<sub>2</sub> NAAQS. Instead, EPA will evaluate these requirements in a separate rulemaking. EPA proposes that Wisconsin has met the section 110(a)(2)(D)(i)(I) requirements relating to significant contribution to transport for the 2010 NO<sub>2</sub> NAAQS.

## 2. Interstate transport - interfere with maintenance.

As described above, EPA has classified all areas of the country as "unclassifiable/attainment" for the 2010 NO<sub>2</sub> NAAQS, NO<sub>2</sub> design values in and around Wisconsin are lower than the standard, WDNR is able to control NO<sub>2</sub> emissions, and CSAPR requires reductions in NO<sub>x</sub> emissions. In other words, NO<sub>2</sub> emissions from Wisconsin are not expected to interfere with the maintenance of the 2010 NO<sub>2</sub> NAAQS in another state.

In this rulemaking, EPA is not evaluating section 110(a)(2)(D)(i)(I) requirements relating to interference with maintenance for the 2008 ozone and 2010 SO<sub>2</sub> NAAQS. Instead, EPA will evaluate these requirements in a separate rulemaking. EPA

proposes that Wisconsin has met the section 110(a)(2)(D)(i)(I) requirements relating to interference with maintenance for the 2010 NO<sub>2</sub> NAAQS.

3. Interstate transport - prevention of significant deterioration.

Section 110(a)(2)(D)(i)(II) requires SIPs to include provisions prohibiting interference with PSD. In this rulemaking, we are not taking action on the state's satisfaction of PSD requirements. Instead, EPA will evaluate Wisconsin's compliance with PSD requirements in a separate rulemaking.

4. Interstate transport - protect visibility.

With regard to the applicable requirements for visibility protection of section 110(a)(2)(D)(i)(II), states are subject to visibility and regional haze program requirements under part C of the CAA (which includes sections 169A and 169B). The 2013 Guidance states that these requirements can be satisfied by an approved SIP addressing reasonably attributable visibility impairment, if required, or an approved SIP addressing regional haze.

On August 7, 2012, EPA published its final approval of Wisconsin's regional haze plan (see 77 FR 46952). Therefore, EPA is proposing that Wisconsin has met the visibility protection requirements of section 110(a)(2)(D)(i)(II) for the

2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS.

5. Interstate and international pollution abatement.

Section 110(a)(2)(D)(ii) requires each SIP to contain adequate provisions requiring compliance with the applicable requirements of section 126 and section 115 of the CAA (relating to interstate and international pollution abatement, respectively).

Section 126(a) requires new or modified sources to notify neighboring states of potential impacts from the source. The statute does not specify the method by which the source should provide the notification. States with SIP-approved PSD programs must have a provision requiring such notification by new or modified sources. A lack of such a requirement in state rules would be grounds for disapproval of this element.

Wisconsin has provisions in its EPA-approved PSD program requiring new or modified sources to notify neighboring states of potential negative air quality impacts. Wisconsin's submissions reference these provisions as being adequate to meet the requirements of section 126(a). EPA proposes that Wisconsin has met the infrastructure SIP requirements of section 110(a)(2)(D)(ii) related to section 126(a) with respect to the 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS.

The submissions from Wisconsin affirm that the state has no

pending obligations under section 115. EPA proposes that Wisconsin has met the infrastructure SIP requirements of section 110(a)(2)(D)(ii) related to section 115 with respect to the 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS.

**E. Section 110(a)(2)(E) - Adequate authority and resources.**

This section requires each state to provide for adequate personnel, funding, and legal authority under state law to carry out its SIP, and related issues. Section 110(a)(2)(E)(ii) also requires each state to comply with the requirements respecting state boards under section 128.

1. Adequate resources.

Wisconsin's biennial budget ensures that EPA grant funds as well as state funding appropriations are sufficient to administer its air quality management program, and WDNR has routinely demonstrated that it retains adequate personnel to administer its air quality management program. Wisconsin's Environmental Performance Partnership Agreement with EPA documents certain funding and personnel levels at WDNR. As discussed in previous sections, basic duties and authorities in the state are outlined in *Wis. Stats.* 285.11. EPA proposes that Wisconsin has met the infrastructure SIP requirements of this portion of section 110(a)(2)(E) with respect to the 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS.

## 2. State board requirements.

Section 110(a)(2)(E) also requires each SIP to contain provisions that comply with the state board requirements of section 128 of the CAA. That provision contains two explicit requirements: (i) that any board or body which approves permits or enforcement orders under this chapter shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits and enforcement orders under this chapter, and (ii) that any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.

In today's action, EPA is neither proposing to approve nor disapprove the portions of the submissions from Wisconsin intended to address the state board requirements of section 110(a)(2)(E)(ii). Instead, EPA will take separate action on compliance with section 110(a)(2)(E)(ii) for the state at a later time. EPA is working with WDNR to address these requirements in the most appropriate way.

### **F. Section 110(a)(2)(F) - Stationary source monitoring system.**

States must establish a system to monitor emissions from stationary sources and submit periodic emissions reports. Each

plan shall also require the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources. The state plan shall also require periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and correlation of such reports by each state agency with any emission limitations or standards established pursuant to this chapter. Lastly, the reports shall be available at reasonable times for public inspection.

WDNR requires regulated sources to submit various reports, dependent on applicable requirements and the type of permit issued, to the Bureau of Air Management Compliance Team. The frequency and requirements for report review are incorporated as part of NR 438 and NR 439. Additionally, WDNR routinely submits quality assured analyses and data obtained from its stationary source monitoring system for review and publication by EPA. Basic authority for Wisconsin's Federally mandated Compliance Assurance Monitoring reporting structure is provided in *Wis. Stats.* 285.65. EPA proposes that Wisconsin has met the infrastructure SIP requirements of section 110(a)(2)(F) with respect to the 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS.

**G. Section 110(a)(2)(G) - Emergency power.**

This section requires that a plan provide for authority that is analogous to what is provided in section 303 of the CAA, and adequate contingency plans to implement such authority. The 2013 Guidance states that infrastructure SIP submissions should specify authority, rested in an appropriate official, to restrain any source from causing or contributing to emissions which present an imminent and substantial endangerment to public health or welfare, or the environment.

*Wis. Stats.* 285.85 provides the requirement for WDNR to act upon a finding that an emergency episode or condition exists. The language contained in this chapter authorizes WDNR to seek immediate injunctive relief in circumstances of substantial danger to the environment or to public health. EPA proposes that Wisconsin has met the applicable infrastructure SIP requirements for this portion of section 110(a)(2)(G) with respect to the 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS.

#### **H. Section 110(a)(2)(H) – Future SIP revisions.**

This section requires states to have the authority to revise their SIPs in response to changes in the NAAQS, availability of improved methods for attaining the NAAQS, or to an EPA finding that the SIP is substantially inadequate.

*Wis. Stats.* 285.11(6) provides WDNR with the authority to develop all rules, limits, and regulations necessary to meet the



NAAQS as they evolve, and to respond to any EPA findings of inadequacy with the overall Wisconsin SIP and air management programs. EPA proposes that Wisconsin has met the infrastructure SIP requirements of section 110(a)(2)(H) with respect to the 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS.

**I. Section 110(a)(2)(I) - Nonattainment planning requirements of part D.**

The CAA requires that each plan or plan revision for an area designated as a nonattainment area meet the applicable requirements of part D of the CAA. Part D relates to nonattainment areas.

EPA has determined that section 110(a)(2)(I) is not applicable to the infrastructure SIP process. Instead, EPA takes action on part D attainment plans through separate processes.

**J. Section 110(a)(2)(J) - Consultation with government officials; public notification; PSD; visibility protection.**

The evaluation of the submissions from Wisconsin with respect to the requirements of section 110(a)(2)(J) are described below.

1. Consultation with government officials.

States must provide a process for consultation with local governments and Federal Land Managers (FLMs) carrying out NAAQS

implementation requirements.

*Wis. Stats.* 285.13(5) contains the provisions for WDNR to advise, consult, contract, and cooperate with other agencies of the state and local governments, industries, other states, interstate or inter-local agencies, the Federal government, and interested persons or groups during the entire process of SIP revision development and implementation and for other elements regarding air management for which WDNR is the officially charged agency. WDNR's Bureau of Air Management has effectively used formal stakeholder structures in the development and refinement of all SIP revisions. Additionally, Wisconsin is an active member of the Lake Michigan Air Directors Consortium (LADCO), which provides technical assessments and a forum for discussion regarding air quality issues to member states. EPA proposes that Wisconsin has satisfied the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS.

## 2. Public notification.

Section 110(a)(2)(J) also requires states to notify the public if NAAQS are exceeded in an area and to enhance public awareness of measures that can be taken to prevent exceedances.

WDNR maintains portions of its website specifically for

issues related to the 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS.<sup>6</sup> Information related to monitoring sites is found on Wisconsin's website, as is the calendar for all public events and public hearings held in the state. EPA proposes that Wisconsin has met the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS.

### 3. PSD.

States must meet applicable requirements of section 110(a)(2)(C) related to PSD. Wisconsin's PSD program in the context of infrastructure SIPs has already been discussed in the paragraphs addressing section 110(a)(2)(C) and (a)(2)(D)(i)(II). EPA will evaluate Wisconsin's compliance with the various PSD and GHG infrastructure SIP requirements of section 110(a)(2)(J) in a separate rulemaking.

### 4. Visibility protection.

With regard to the applicable requirements for visibility protection, states are subject to visibility and regional haze program requirements under part C of the CAA (which includes sections 169A and 169B). In the event of the establishment of a new NAAQS, the visibility and regional haze program requirements

---

<sup>6</sup> <http://dnr.wi.gov/topic/AirQuality/Pollutants.html>

under part C do not change. Thus, we find that there is no new visibility obligation "triggered" under section 110(a)(2)(J) when a new NAAQS becomes effective. However, as EPA discussed above in section D, Wisconsin has a fully approved regional haze plan. This plan also meets the visibility requirements of section 110(a)(2)(J). EPA proposes that Wisconsin has satisfied the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS.

**K. Section 110(a)(2)(K) - Air quality modeling/data.**

SIPs must provide for performing air quality modeling for predicting effects on air quality of emissions from any NAAQS pollutant and submission of such data to EPA upon request.

WDNR maintains the capability to perform computer modeling of the air quality impacts of emissions of all criteria pollutants, including both source-oriented and more regionally directed complex photochemical grid models. WDNR collaborates with LADCO, EPA, and other Lake Michigan states in order to perform modeling. *Wis. Stats.* 285.11, *Wis. Stats.* 285.13, and *Wis. Stats.* 285.60 - 285.69 authorize WDNR to perform modeling. EPA proposes that Wisconsin has met the infrastructure SIP requirements of section 110(a)(2)(K) with respect to the 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS.

**L. Section 110(a)(2)(L) - Permitting fees.**

This section requires SIPs to mandate each major stationary source to pay permitting fees to cover the cost of reviewing, approving, implementing, and enforcing a permit.

WDNR implements and operates the title V permit program, which EPA approved on December 4, 2001 (66 FR 62951). EPA approved revisions to the program on February 28, 2006 (71 FR 9934). NR 410 contains the provisions, requirements, and structures associated with the costs for reviewing, approving, implementing, and enforcing various types of permits. EPA proposes that Wisconsin has met the infrastructure SIP requirements of section 110(a)(2)(L) for the 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS.

**M. Section 110(a)(2)(M) - Consultation/participation by affected local entities.**

States must consult with and allow participation from local political subdivisions affected by the SIP.

In addition to the measures outlined in the paragraph addressing WDNR's submittals regarding consultation requirements of section 110(a)(2)(J), as contained in *Wis. Stats.* 285.13(5), the state follows a formal public hearing process in the development and adoption of all SIP revisions that entail new or revised control programs or strategies and targets. For SIP

revisions covering more than one source, WDNR is required to provide the standing committees of the state legislature with jurisdiction over environmental matters with a 60 day review period to ensure that local entities have been properly engaged in the development process. EPA proposes that Wisconsin has met the infrastructure SIP requirements of section 110(a)(2)(M) with respect to the 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS.

#### **V. What action is EPA taking?**

EPA is proposing to approve most elements of submissions from Wisconsin certifying that its current SIP is sufficient to meet the required infrastructure elements under section 110(a)(1) and (2) for the 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS.

EPA's proposed actions for the state's satisfaction of infrastructure SIP requirements, by element of section 110(a)(2) and NAAQS, are contained in the table below.

Element	2008 Ozone	2010 NO <sub>2</sub>	2010 SO <sub>2</sub>
(A) - Emission limits and other control measures.	A	A	A
(B) - Ambient air quality monitoring/data system.	A	A	A
(C)1 - Program for enforcement of control measures.	A	A	A
(C)2 - PSD.	NA	NA	NA
(D)1 - I Prong 1: Interstate transport - significant contribution.	NA	A	NA
(D)2 - I Prong 2: Interstate transport - interfere with maintenance.	NA	A	NA
(D)3 - II Prong 3: Interstate transport - prevention of significant deterioration.	NA	NA	NA

(D)4 - II Prong 4: Interstate transport - protect visibility.	A	A	A
(D)5 - Interstate and international pollution abatement.	A	A	A
(E)1 - Adequate resources.	A	A	A
(E)2 - State board requirements.	NA	NA	NA
(F) - Stationary source monitoring system.	A	A	A
(G) - Emergency power.	A	A	A
(H) - Future SIP revisions.	A	A	A
(I) - Nonattainment planning requirements of part D.	NA	NA	NA
(J)1 - Consultation with government officials.	A	A	A
(J)2 - Public notification.	A	A	A
(J)3 - PSD.	NA	NA	NA
(J)4 - Visibility protection.	A	A	A
(K) - Air quality modeling/data.	A	A	A
(L) - Permitting fees.	A	A	A
(M) - Consultation and participation by affected local entities.	A	A	A

In the above table, the key is as follows:

A	Approve
NA	No Action / Separate Rulemaking

## VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995



(15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control,  
Incorporation by reference, Intergovernmental relations,  
Nitrogen dioxide, Ozone, Reporting and recordkeeping  
requirements, Sulfur dioxide.

Dated: April 2, 2015.

Susan Hedman,  
Regional Administrator, Region 5.

[FR Doc. 2015-09051 Filed: 4/17/2015 08:45 am; Publication Date:  
4/20/2015]